vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2390 OF 1995

Madanlal Dalichand Shingavi ... Petitioner

V/s.

M/s.Bajaj Electricals (I) Ltd.
(Matchwel Unit), Pune ... Respondent

Mr.Gajendra Singh Jadhavrao for Petitioner
Mr.A.G. Damle for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 3, 2007**

ORAL JUDGMENT:

. The petitioner has approached this Court against the judgment of the Industrial Court in complaint (ULP) No.511 of 1989 dated 21.3.1994. The petitioner contends that he was working as a senior clerk in the accounts section of the respondent company from 16.6.1967. He continued to work with the Respondent till 8.9.1989 when he attained the age of 58 years. According to the respondent company, this was the age of superannuation while the petitioner contends that the age of superannuation was 60 years. On 7.12.1989, a complaint was filed by the petitioner under Item 9 and 10 of Schedule IV of the MRTU & PULP Act contending that the Model Standing orders are applicable to him and, therefore, he ought to have been continued till the age of 60 years. The Respondent company on the other hand

pleaded in its written statement that there was a settlement of 1973 which fixed the age of retirement at 58 years and, therefore, the petitioner had rightly been retired at that age.

2. Evidence was led by both the the parties on 18.8.1993 on an application made by the respondent company. A preliminary issue was framed as to whether the settlement dated 14.2.1973 is legal and valid in law. This settlement of 14.2.1973 is the one which is relied on by the respondent company to contend that the age of retirement was 58 years. On a perusal of the order of the Industrial Court, I find that the Industrial Court has not considered this issue at all as a preliminary issue. The Industrial Court has held that the certified standing orders are silent on the aspect of the retirement age. However, because the agreement of 1973 had been in vogue for a long period of time, the Industrial Court held that the agreement which stipulates that the age of retirement for clerical staff is 58 years is binding on the petitioner. Therefore, the Industrial Court is clearly in error in not deciding as to whether the settlement of 14.2.1973 is legal and valid in law although it had framed the issue.

3. The other issue on which the complaint was dismissed was that the amendment to the certified

standing orders was pending consideration before the appropriate authority under the Industrial Employment (Standing Orders) Act. The Industrial Court without considering whether the amendment was granted has dismissed the complaint.

4. Reliance is placed on the Full Bench in the case of *Gangadhar Balgopal nair v/s. Voltas Limited & Anr.,* **2007 (1) Bom.C.R.1** to submit that when the certified standing orders are silent on any aspect which is contained in the model standing orders, the model standing orders would *ipso facto* apply to the establishment. This aspect also has not been considered by the Industrial Court and, therefore, the complaint is remanded to the Industrial Court for deciding it afresh. The Industrial Court will consider the preliminary issue which has been framed as well as all other related issues. The complaint shall be disposed of within six months from today.

4. Rule made absolute accordingly. No costs.